

AMENDED IN ASSEMBLY JULY 23, 2001

AMENDED IN ASSEMBLY JULY 3, 2001

AMENDED IN SENATE MARCH 29, 2001

SENATE BILL

No. 771

Introduced by ~~Committee on Business and Professions~~ (Senators
Figueroa (Chair), Machado, Morrow, Murray, O'Connell, and
Polanco) *Senator Figueroa*

(Principal coauthor: Senator Burton)

(Coauthor: Senator Karnette)

(Coauthors: Assembly Members Alquist, Aroner, Bates, Havice,
Keeley, Richman, Shelley, and Strom-Martin)

February 23, 2001

~~An act to amend Sections 7006, 7026, 7027.3, 7028.7, 7028.13, 7059.1, 7071.11, 7074, 7091, 7112, 7153, 17910.5, 17913, 17917, 17923, 22355 and 22453.1 of, and to add Sections 5536.26 and 7112.1 to, the Business and Professions Code, relating to the regulation of businesses, and making an appropriation therefor. An act to add Article 8 (commencing with Section 17590) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to advertising.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 771, as amended, ~~Committee on Business and Professions Figueroa. Regulation of businesses—Unsolicited and unwanted telephone solicitations.~~

Existing law prohibits certain unfair business practices, including certain advertising practices.

This bill would require the Department of Consumer Affairs to maintain a “do not call” list, containing the telephone numbers of

telephone subscribers who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors. It would prohibit, subject to certain exceptions, a telephonic solicitor from calling any telephone number on the then current “do not call” list to, among other things, seek to sell or lease any consumer goods or services. It would also prohibit persons who sell, lease, or rent telephone solicitation lists, except for directory assistance and telephone directories sold by telephone companies, from including in their lists telephone numbers that appear on the then current “do not call” list. Fees paid by telephone solicitors would be deposited in the Special Telephone Solicitors Fund created by the bill.

Existing law makes it a crime to violate any of the provisions governing advertising. By adding these new prohibitions to those provisions, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(1) Existing law, the Architects Practice Act, provides that architects may plan the sites and designs of buildings and structures, and that professional services include the compliance with applicable codes and regulations, the governmental review process and contract administration.~~

~~This bill would provide that the use of the words “certify” or “certification” by a licensed architect would constitute a professional opinion regarding the facts which are the subject of the certification and would not be considered a warranty or guarantee.~~

~~(2) Existing law, the Contractors’ State License Law, authorizes the Contractors’ State License Board to conduct all functions and duties relating to the licensing, regulation, and discipline of licensees and makes certain acts a crime, including using an incorrect contractor’s license number with the intent to defraud. The registrar is the executive officer who carries out the board’s administrative duties and tasks delegated by the board and is authorized to issue a citation for a violation of specified provisions that may result in the assessment of a civil penalty. Existing law specifies when the board will conduct its meetings, what activities contractors may perform, what criminal~~

~~penalties exist when a licensed or unlicensed person intentionally uses a contractor's license number that does not belong to him or her. Existing law provides how much time the registrar has to collect civil penalties from nonlicensee citations, provides licensing requirements for fictitious name usage, provides timeframes for filing claims against a licensee's cash deposit, sets requirements regarding the licensing examination process, and addresses misrepresentation and fraud concerning license application and renewal. Existing law requires that these civil penalties and other fees that are collected be deposited in the Contractors' License Fund which is continuously appropriated for purposes of the Contractors' State License Law.~~

~~This bill would authorize the board to meet once each quarter, allow contractors to deal with underground storage tanks, allow the registrar to issue citations to unlicensed individuals and unregistered salespersons the registrar believes violated the Contractors' State License Law and to persons who use an incorrect contractor's license number to defraud others, and would also authorize the registrar to use collection agencies to collect civil penalties. The civil penalties assessed and collected by this bill would be deposited in the Contractor's License Fund which is continuously appropriated. Therefore, this bill would make an appropriation.~~

~~This bill would also provide that a licensee could only conduct business under one name per license, extend the time in which a claim could be made against a licensee's cash deposit to 3 years after the expiration of the license, revise the licensing examination procedures, and expand the grounds for disciplinary action during the license application and renewal process concerning misrepresentations or omissions made on the application or renewal form.~~

~~(3) Existing law does not allow the use of a fictitious business name that includes the words or abbreviations "Company," "Limited," "Co.," or "Ltd." if a business is not a limited liability company.~~

~~This bill would allow the use of a fictitious business name that includes the words or abbreviations "Company," "Limited," "Co.," or "Ltd." if that use does not imply that the business is a limited liability company.~~

~~Existing law requires that a fictitious business name statement contain the name or names of the person or persons doing business, the name of the business, and when the business began operating under the fictitious name. The form must be signed by the applicant or applicants and filed with the county clerk where the business is located.~~

~~This bill would require the applicant or applicants to declare that the information in the fictitious business name statement is true and correct. Since the filing of a false statement would constitute a crime, the bill would impose a state-mandated local program.~~

~~Existing law requires the publication of a refiled fictitious business name statement when the prior statement has expired unless there are no changes in the information in the statement.~~

~~This bill would provide that the exception from republication of a fictitious business name statement applies only if the statement is refiled within 40 days of the expiration date of the previous statement. This bill would also eliminate an exception from publication of a statement of withdrawal from a partnership operating under a fictitious business name.~~

~~(4) Existing law requires that county clerks issue permanent identification cards with a photograph to each process server and register professional photocopiers.~~

~~This bill would require each county clerk to issue temporary identification cards, valid for 120 days, to applicants while waiting for background checks from the Federal Bureau of Investigation and the Department of Justice. By requiring county clerks to issue temporary identification cards, this bill would impose a state-mandated local program. This bill would correct an erroneous section reference in a provision regulating the fee payable in connection with the filing of an application with a county clerk for registration as a professional photocopier.~~

~~(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~Vote: $\frac{2}{3}$ majority. Appropriation: yes *no*. Fiscal committee: yes. State-mandated local program: yes.~~



The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 5536.26 is added to the Business and~~
2 SECTION 1. Article 8 (commencing with Section 17590) is
3 added to Chapter 1 of Part 3 of Division 7 of the Business and
4 Professions Code, to read:

5
6 Article 8. *Unsolicited and Unwanted Telephone Solicitations*

7
8 17590. (a) *There is a compelling state interest to protect the*
9 *privacy of telephone subscribers who wish to avoid unsolicited and*
10 *unwanted telephone solicitations.*

11 (b) *The act of becoming a telephone subscriber should not*
12 *undermine or lessen a person's right of privacy as guaranteed*
13 *under Section 1 of Article I of the California Constitution.*

14 17591. (a) *The Department of Consumer Affairs shall*
15 *maintain a "do not call" list, updated no less frequently than*
16 *quarterly, which shall set forth the telephone numbers, but not the*
17 *names or addresses, of telephone subscribers, arranged by area*
18 *code and numerical sequence, who do not wish to receive*
19 *unsolicited and unwanted telephone calls from telephone*
20 *solicitors as described in Section 17592. The "do not call" list*
21 *shall indicate any exclusions designated by the telephone*
22 *subscriber as provided in subdivision (b).*

23 (b) *Telephone subscribers may place their telephone numbers*
24 *on the "do not call" list in the manner prescribed by the*
25 *department. A telephone subscriber may exclude from the*
26 *coverage of the "do not call" list telephone calls made by the*
27 *representative of any entity with which the subscriber or any*
28 *member of the subscriber's household has a bank or investment*
29 *account, financial relationship, or insurance coverage, or from*
30 *which the subscriber or household member has previously*
31 *purchased goods or services. The telephone subscriber shall*
32 *designate any exclusions in the manner prescribed by the*
33 *department.*

34 (c) *Telephone solicitors, as defined in Section 17592, may*
35 *obtain copies of the "do not call" list by paying a fee to the*
36 *department in an amount not to exceed the costs incurred by the*
37 *department in the preparation, production, and distribution of that*
38 *list. The department shall offer a statewide list and shall also offer*

1 lists of areas within the state. The determination of the number and
2 definition of areas shall be within the discretion of the department.

3 (d) It is the intent of the Legislature that the fees paid to the
4 department by telephone solicitors be utilized by the department
5 in carrying out this article and shall not exceed the actual
6 estimated costs in carrying out this article. The fees obtained by
7 the department shall be deposited in the Special Telephonic
8 Solicitors Fund, which is hereby created. All moneys in the fund
9 shall be subject to annual appropriation in the Budget Act.

10 (e) A person or entity that obtains a “do not call” list shall not
11 use the list for any purpose other than to comply with this article.

12 (f) The procedures prescribed by the department for the
13 implementation of this article shall not be subject to Chapter 3.5
14 (commencing with Section 11340) of Part 1 of Division 3 of Title
15 2 of the Government Code.

16 17592. (a) For purposes of this article, a “telephone
17 solicitor” means any person or entity who, on his or her own behalf
18 or through salespersons or agents or otherwise, does any of the
19 following:

20 (1) Seeks to sell or lease any consumer goods or services or
21 documents that can be used to obtain goods or services.

22 (2) Offers or solicits any extension of credit for personal,
23 family, or household purposes.

24 (3) Seeks marketing information for any purpose.

25 (4) Seeks to sell any investment, insurance, or financial
26 services.

27 (5) Makes any representation described in Section 17511.1.

28 (b) Except for telephone calls described in subdivision (d), no
29 telephonic solicitor shall call any telephone number on the then
30 current “do not call” list and do any of the following:

31 (1) Seek to sell or lease any consumer goods or services or
32 documents that can be used to obtain goods or services.

33 (2) Offer or solicit any extension of credit for personal, family,
34 or household purposes.

35 (3) Seek marketing information for any purpose.

36 (4) Seek to sell any investment, insurance, or financial services.

37 (5) Make any representation described in Section 17511.1.

38 (c) No person or entity which sells, leases, or rents telephone
39 solicitation lists, except for directory assistance and telephone
40 directories sold by telephone companies or their affiliates, shall

1 include in those lists those telephone numbers that appear on the
2 current “do not call” list.

3 (d) Subdivision (b) shall not apply to any of the following:

4 (1) Telephone calls made in response to the express request of,
5 or an advertisement by, the person called.

6 (2) Telephone calls made in connection with the collection of
7 a debt or the offer by a creditor to the person called of an extension
8 of credit to pay a delinquent obligation owed by the person called
9 to that creditor.

10 (3) Telephone calls that the telephone subscriber excluded from
11 the coverage of the “do not call” list as provided in subdivision (b)
12 of Section 17591.

13 (e) Nothing in this section prohibits a telephone solicitor from
14 contacting by mail a telephone subscriber whose telephone
15 number appears on the “do not call” list to obtain the subscriber’s
16 express permission allowing the telephone solicitor to make the
17 type of calls described in subdivision (b).

18 17593. (a) Any person who has received a telephone
19 solicitation that is prohibited by Section 17592 may bring a civil
20 action in any court of competent jurisdiction against a telephonic
21 solicitor to recover or obtain any one or more of the following
22 remedies:

23 (1) An order to enjoin the violation.

24 (2) A civil penalty of up to five hundred dollars (\$500) for the
25 first violation and up to one thousand dollars (\$1,000) for a second
26 and each subsequent violation.

27 (3) Court costs, including reasonable attorney’s fees.

28 (4) Any other relief that the court deems proper.

29 (b) Nothing in this article shall limit the authority of the
30 Attorney General, district attorneys, or city attorneys under
31 Chapter 5 (commencing with Section 17200) of Part 2 or under
32 this part.

33 (c) The rights, remedies, and penalties established by this
34 article are in addition to the rights, remedies, or penalties
35 established under other laws.

36 SEC. 2. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 *for a crime or infraction, within the meaning of Section 17556 of*
2 *the Government Code, or changes the definition of a crime within*
3 *the meaning of Section 6 of Article XIII B of the California*
4 *Constitution.*

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7 **All matter omitted in this version of the**
8 **bill appears in the bill as introduced/**
9 **amended in the Assembly, July 3, 2001**
10 **(JR 11)**
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